86-812

No. ____

Supreme Court, U.S.
FILED
AUG 12 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1986

CAROL C. JOHNSON,

Petitioner,

—against—

IRVING H. PERLMUTTER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

CAROL C. JOHNSON
Petitioner Pro Se
600 West 111th Street
New York, New York 10025
(212) 663-5445

QUESTIONS PRESENTED

1. Whether the Connecticut Courts, namely, the Superior Court (the trial court), the Appellate Court and/or the Supreme Court which by their respective decisions herein have deprived Petitioner herein of Due Process and/or Equal Protection in violation of the Constitution of the United States, Amendment XIV Section 1 and/or in violation of the Constitution of the State of Connecticut Article FIRST sections 8, 10, 20 (or any one of them) dealing with Due Process and Equal Protection.

2. Whether the State Trial Court (the Superior Court), the intermediate State Appellate Court (the Appellate Court) and/or the State Supreme Court (the Supreme Court) has or have so far departed from the accepted and usual course of judicial proceeding and judicial adjudication as to deprive Petitioner herein of due process and judicial adjudication and/or so far sanctioned such departure by any other of the Courts which have acted herein as to call for an exercise of this United States Supreme Court intervention and/or supervision.

3. Whether the State Trial Court (the Superior Court), the intermediate State Court (the Appellate Court) and/or the State Supreme Court has or have so far departed from the accepted and usual legal course of judical proceeding and judicial procedure as to deprive Petitioner herein of due process and/or equal protection as to call for exercise of the U.S. Supreme Court's review and/or supervision.

4. Whether the Superior Court's Memorandum is so devoid of facts to sustain its decision and to allow for appellate review as to render it fatally defective.

5. Whether the Trial Court and/or the Appellate Court and/or the Supreme Court have refused to apply the Cannons of Ethics to the violations apparent in these proceedings.

TABLE OF CONTENTS

	PAGE
Questions Presented	i
Table of Contents	ii
List of Authorities and Cases	iii
Petition for Writ of Certiorari	1
Opinion Below	1
Jurisdiction	2
Constitutional Provisions Involved	2
Statement of the Case	3
Reasons for Granting the Writ	9
Conclusion	13
Appendix	
Connecticut Supreme Court Order on Petition for Certification to Appeal	1a
Connecticut Appellate Court Opinion	2a
Superior Court Judgment	9a
Supreme Court Memorandum of Opinion	11a
Perlmutter's Motion to Withdraw Appearance	22a
Order on Motion to Withdraw Appearance	23a

TABLE OF AUTHORITIES

Constitutions: PAGE

Constitution of the United States, Amendment XIV Sec. 1 2

Constitution of Connecticut, Article First, Sections, 8, 10, 20 2

Statutes:

28 U.S.C. § 1257(c) 2

IN THE

Supreme Court of the United States

OCTOBER TERM 1986

No. ____

CAROL C. JOHNSON,

Petitioner,

—against—

IRVING H. PERLMUTTER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

To the Honorable Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States.

Carol C. Johnson, the petitioner prays that a writ of certiorari issue to review the judgment and final order of the Supreme Court of the State of Connecticut.

OPINION BELOW

The last opinion below is that of the Connecticut Supreme Court dated May 15, 1986 reading as follows: ORDER ON PETITION FOR CERTIFICATION TO APPEAL. On consideration of the petition by the defendant for certification to

appeal from the Appellate Court (6 Conn. App. 292) it is hereby ordered that said petition be, and the same is hereby denied.

The foregoing order and all prior orders and opinions are set up in the Appendix in reverse order, that is to say, the latest order in point of time is at the top of the list.

JURISDICTION

This Court's jurisdiction is invoked (1) under 28 U.S.C. § 1257(c) and Supreme Court Rules. The most pertinent parts being as follows.

> Section 1257(c). State courts; * * * certiorari.
>
> Final judgments or decrees rendered by the highest court of a State in which decision could be had, may be reviewed by the Supreme Court as follows.
>
> (2) Under the Court's inherent power to do justice.
>
> (3) By writ of certiorari * * * where any * * * right, privilege or immunity is specially set up or claimed under the Constitution (of the United States) Fourteenth Amendment section one nor shall any State [and this includes Courts which are State agencies] without due process of law, deny to any person within its jurisdiction the equal protection of the law.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Article XIV, Section 1. * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Constitution of the State of Connecticut, Article First, Section 8: * * * No person shall * * * be deprived of * * *

property without due process of law." Section 10: * * * every person, for an injury done to him in his * * * property * * *, shall have remedy by due course of law, right and justice * * *. Section 20: No person shall be denied equal protection of the law * * *.

STATEMENT OF THE CASE

An action entitled Irving H. Perlmutter, Plaintiff against Carol C. Johnson, Defendant was instituted in the Connecticut Superior Court in New Haven.

On November 21, 1980 I had employed Perlmutter, an attorney, to enter his appearance IN ADDITION to my appearance in two cases pending in the Superior Court. One case was entitled Carol C. Johnson, Plaintiff against the Branford Zoning Board of Appeals and Walter Kreske, Defendants. The action was an Administrative Appeal to set aside a variance allowed to Walter Kreske. The other case was entitled Carol C. Johnson vs Harold L. Fuller and Cynthia Keister, a Landlord-Tenant case.

In both cases Perlmutter entered his appearance IN ADDITION TO my appearance already filed.

We had agreed that the hourly rate of pay was to be $65 an hour.

I had prepared both cases and given a set of papers in each case to Perlmutter.

In the Fuller case we went to trial and a judgment was rendered in my favor and Perlmutter billed me for $860 which was paid within 3 to 5 days.

The dispute herein relates to what is set forth below.

Subsequent to the Fuller Judgment Fuller's attorney filed an appeal.

Perlmutter sent me the following letter.

FULLER CASE ASPECTS

(Letterhead of ULLMAN, PERLMUTTER AND SKLAVER)

December 4, 1981

Mr. Carol C. Johnson
201 Linden Avenue
Branford, CT 06405

Re: Carol C. Johnson
Vs: Harold Fuller, et al

Dear Mr. Johnson:

As you know, the defendant Harold Fuller has appealed the judgment rendered by Judge Grillo. We are in receipt of his attorney's brief. Certain factual issues were raised in the brief and in order to overcome the factual claims, we were obliged to order a transcript of the trial. The cost of the transcript is $395.89 (see the billing enclosed) and we will have additional costs by way of printing charges. The time for filing the brief has been extended to December 14, 1981, and at this point, we do not know if you want us to continue to represent you in this proceeding or in any proceeding. Unless we are reimbursed for our disbursement to date, and receive a retainer for the cost of printing the brief, and for our services in connection with the prosecution of the appeal, we will be obliged to ask the court for permission to withdraw our appearance.

We must have a response to this letter no later than December 9, 1981 because we will be required to obtain an additional extension of time.

You can make all of this unnecessary by making the payment requested.

Very truly yours,

/s/ IRVING H. PERLMUTTER
Irving H. Perlmutter

IHP:bp

This letter was received by me on Saturday, December 5th, 1981. On Monday December 7th, 1981 I went to Mr. Perlmutter's office and told him I would not pay him in advance and that our relationship was at an end. In the Zoning Case he had resigned on November 30, 1981. He had absolutely no right to represent me from that meeting on. See Transcript page 190.

On Monday December 7, 1981 I went to Perlmutter's office and told him that I would not pay in advance and that we were thru and I left his office. The judgment debtor had no money, had been arrested and had left for parts unknown. I had decided to handle the appeal myself having several times appeared before the Connecticut Supreme Court and won and it would save attorney fees.

Secretly and without my knowledge Perlmutter filed a brief without my permission or knowledge and argued before the Supreme Court for ten minutes and then sent me a bill and in the Complaint asked for $5,258.58 (this included disbursements which were later set at $395.89, trial transcript and $232.69 printing of brief for a total of $628.58, deducting the disbursements leaves $4,630.00. He knew that there was no way to recover the $4,630.00 from Fuller.

Perlmutter's attorney in his brief claimed that I should have put my statement, to Perlmutter in his office, that we were thru, should have been put in writing and that since I had not put the severance statement in writing but simply stated to him that we were thru that such constituted a hiring of Perlmutter to handle the appeal.

During the trial when Perlmutter was on the witness stand Judge Norton Levine got up from his seat in the middle of the bench and walked three or four steps to the end of the bench, leaned over and had a secret conversation with Perlmutter and then as he was returning to his seat in the center of the bench he said, "I may have to ask you to amend your complaint." In the transcript the Court Stenographer pick this statement up and recorded, at the top of page 146 "and I may call for an amendment of the complaint." The stenographer could of course not record the fact that the Judge had moved over to the witness and talked with Perlmutter. After being seated the Court referred to the $5,258.58 which Perlmutter claimed in the Complaint and the Court said as follows:

> THE COURT: There is an affidavit. I'm rounding it off to fifty-two hundred fifty-eight odd dollars.
>
> THE WITNESS: That's correct.
>
> THE COURT: What you're telling me now, that should be a reduced amount of thirty-nine hundred sixty-eight odd dollars?
>
> THE WITNESS: That's correct.
>
> THE COURT: You might note in your file, I may call for an amendment to the complaint, Mr. Frechette.

In reference to the foregoing the Transcript at page 430 reads as follows:

> MR. JOHNSON: There was one thing you told me to refresh your recollection on and that is what you were talking about, what I call the attachment, which is a Summons and Complaint on the second to last page or so. There were two figures and one of them was reduced about a thousand or some dollars. You talked to Mr. Perlmutter about that and I believe you were going to tell me why there was a reduction from—

THE COURT: I don't believe I ever promised anything of the sort. Anything else you want to say to me? If not, we stand concluded.

MR. FRECHETTE: Thank you, your Honor.

THE COURT: The hearing of this case is concluded, subject to filing briefs as the Court indicated.

MR. JOHNSON: I take an exception, if you don't tell me what the conversation is about.

THE COURT: Sir, your exception has been duly noted.

It is to be noted that the judge does not deny he had the talk with Perlmutter only that he would not tell me about it. I had moved at the commencement of the trial that the judge disqualify himself. This was done at that time in order to get my motion on record. He refused. The secret talk strengthened my belief.

The foregoing shows that I had refused to employ Perlmutter as to the Fuller Appeal case.

In my Administrative Appeal case pending in the Superior Court in New Haven from the time I employed Perlmutter on November 21, 1980 to the date he resigned November 21, 1981 or November 30, 1981 when his petition became official he, instead of assisting me, acted in such a way that my Administrative case was ruined.

The transcript was order in full.

At page 78 Perlmutters testimony is as follows:

T.p78. "Mr. Johnson had brought files with him. So, in addition to my discussing the matter with Mr. Johnson I had to familiarize myself with the contents of the file, to see what had to be done and what stage the proceeding was at.

In the case of the Branford Zoning Board of Appeals, there was a matter which was rather pressing because of

the fact that Mr. Johnson had indicated, I believe, that it was on a dormant case list and that things had to be done in order to keep it from being stricken by the Court under—I guess under Section 291, or whatever the appropriate section of the Practice is. * * * It had gone to the Supreme Court and, apparently, this court, the Superior Court, was getting ready to dismiss the case. So that's—There were certain things that had to be done. But the entire transaction—

Q. By "this court," you're talking about the merged court?

A. Yes: the Superior Court."

Although Perlmutter was familiar with the Court Clerk's Office, less than two blocks away, and Dormancy Calendars, he did nothing, and on November 28, 1980 my case was marked off by a judgment of dismissal by the Court.

For the next year until his resignation on November 21, 1981 he made motions none of which except two motions to restore my case to the calendar, did my case (my appeal), any good, only harm.

In his complaint dated July 19, 1983 he set his fee at $4,525.48 which included disbursements of $30.00 sheriff's fee and copy of transcript $15.48—a total of $45.48 which places the fee at $4,480.00 (for 44.8 hours).

The APPELLATE COURT formula makes no provision for deduction for the hours Perlmutter spent in getting the case marked off because of his negligence restored to the calendar and does not provide for deduction of the hours Perlmutter spent after he voluntarily without reason took the restore case off of the calendar and spent 6 months to get the case rerestored. Nor is there any provision for the hours he spent in bringing into the case a non-necessary party, nor for the hours he spent in needlessly having my appeal amended in order to bring in the unnecessary party.

The unnecessary party made a motion for Summary Judgment of my appeal and Perlmutter refused to handle it and I handled it and had the Summary Judgment motion denied. The unnecessary party also put in an answer to my amended appeal and Perlmutter put in a reply and then moved to amend his reply. Judge Reynolds in his denial of Perlmutter's motion wrote that the amendment would serve no useful purpose and that indeed it seemed that it had been put in only to delay the hearing of the appeal.

Perlmutter then refused to do the only thing he was hired to do. He refused to help me prepare for the handling of the appeal.

HE THUS LOST ANY RIGHT TO ANY COMPENSATION.

He said that he could not legally argue against a prior decided case to show that it was not applicable to my appeal case.

The famous case of Erie v. Thompkins could never have upset the ruling in a prior case that had stood for over 100 years if the attorneys in that case had refused to attack the prior decision. In that famous case one of the Supreme Court justices from the Bench pointed out that the attorneys had brief the point and would they not care to argue the point.

THE REASON FOR GRANTING THE PETITION

The Reasons are to be found in the preceding statement of the case supplemented by the following.

Petitioner has been denied Due Process and equal protection in violation of the 14th Amendment of the Constitution of the United States and deprived of enforcement of the Cannon of Ethics and as follows:

1. The Judge assigned to the case appeared to be not a regular assignee. He did not even know that in his State of Connecticut there was an intermediate Court named the "APPELLATE COURT".

2. He did not know that he could take judicial notice of the contents of the Administrative Appeal case pending in Court in which he was sitting filed by me and as to which I employed Perlmutter to assist me. Perlmutter being the respondent in this Petition. I had asked him to do so and he had replied that he would have to look up the question of whether he had the right. The next morning he admitted that he did have the right. He would not requisition the file I had to go downstairs to the Clerk's office and ask that it be sent up and it was sent up.

3. While on the witness stand and acting as my own attorney (I am admitted in New York but not in Connecticut) he refused to let me put in objections to questions of the nature that an independent attorney would have put in. He said I would have to wait until after I had left the witness stand. Then it would be too late and difficult to remember and too late to be effective.

4. He rejected the motion to disqualify himself on the ground proposed that he was friendly with the attorney, Perlmutter who was suing me.

5. In the Trial Court's Memorandum of Decision are rulings against me without any showing in the slightest that there was any evidence to support such rulings.

6. The Trial Court refused to let me make offers of proof.

7. I had employed Perlmutter to ask me questions in the case I had pending against Fuller. He did so help me and I paid his $860 bill within 5 days. Fuller's attorney took an appeal and Perlmutter wrote his December 3, 1980 letter to me stating that he did not know whether I wanted him to represent me in the Appeal but if I did I would have to pay in advance. I went to his office and refused to pay in advance and TOLD HIM THAT WE WERE THRU and left his office. Fuller the judgment debtor, Fuller, had been arrested, had no money and had left for parts unknown.

I had decided to handle the appeal myself just as I had handled his disposses proceedings against his lawyer who had brought the appeal.

Secretly Perlmutter, sometime after I had left his office, Perlmutter filed a brief and proceed to argue the appeal.

I had a case in the Connecticut Supreme Court and by chance learnt that the Fuller appeal was to be on the next day call of the calendar but on the 2 PM afternoon session. After arguing my appeal and winning it I stayed over in Hartford and the next day went to the afternoon session only to find the room dark. Perlmutter had consented that the appeal be heard at the end of the morning session. I went to the Clerk's Office and learnt that he had argued for 10 minutes. He sent me a bill for $3,968.58.

At the trial Perlmutter never testified that I had employed him to handle the appeal. His attorney in a brief wrote that I should have put my refusal to employ him in writing. HE NEVER WAS AUTHORIZED TO HANDLE THE FULLER APPEAL.

8. At one point in the trial the Trial judge left his centered position seat on the Bench, walked over to the end of the Bench leaned over and had a secret talk with Perlmutter then sitting on the witness seat and then returned to his position in the center of the Bench saying, "I may have to ask you to amend your complaint. Later he refused to tell me what had been said. T.p. 146, 430.

9. The First Selectman of the Town of Branford had been very nice to me I did not want to execute on a Bill of Costs that I had. Yet Perlmutter without my consent and against my telling him not to use the ten year old Bill of Costs nevertheless prepared a Property Execution and collected $2,391.66 on it from the Town of Branford one of the defendants in my Administrative Appeal and then he put it in his bank and did not let me know what he had done. He had prepared the bill on December 24, 1980 (On that date I owed him nothing). It was

not until eleven months later, November 12, 1981, that he told me what he had done and that he had the money. In spite of this the Trial Court refused to critize him or to take him to task. The Appeal Court did the same and did not critize what he had done.

Perlmutter never disputed these facts as to which I testified that he had no authority to use the Bill of Costs.

On the same day that he had prepared the property execution he took my appeal case off of the trial calendar leaving the Town of Branford off as a defendant.

This was so suspicious in my view that I could not and have not been able to understand the Trial Court and the Appellate Court not investigating the affair.

It should be noted that Dumark, the Town of Branford attorney, had the Town Check made out to Perlmutter making it easy for Perlmutter to intercept it, cash it and hide it in his bank even though at the time I owed him no money.

I wonder whether Perlmutter unexplained action of voluntarily taking the appeal case off of the trial calendar on December 24, 1980 had any relationship to the fact that on the same December 24, 1980 he prepared the Property execution which enabled him to have the Property Execution paid.

10. The State of Connecticut refused to review the action of the lower Courts without stating any reason for the refusal. It would follow if the actions of the lower Courts were wrong that the Supreme Court is chargeable with all that the lower Courts were.

11. My life in my Home in Connecticut has been greatly disagreeably affected by my Administrative Appeal being called moot as a result of my attorney failing to work for me as agreed to have the Administrative appeal granted which would have put me in position to restore my home as a place to live in comfortably since 1932.

The man who wrote the 1973 law has said that it did not make my appeal moot as the 50% floor space provision could be utilized only if its use did not result in violation of any of the other provisions and/or restrictions in the new law which are still violated by Kreske's building.

It appears to me that I have been deprived of due process and equal protection of the laws and deprived of the enforcement of the Cannon of Ethics Provisions herein.

CONCLUSION

The Petition for Writ of Certiorari should be granted and the trial court judgment set aside in toto.

Respectfully submitted,

CAROL C. JOHNSON
Petitioner Pro Se
(Admitted in the U.S.S.C.)
600 West 111thStreet
New York, New York 10025
212-663-5445

APPENDIX

SUPREME COURT
STATE OF CONNECTICUT

No. PSC-85-1115

Irving H. Perlmutter

v.

Carol C. Johnson

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (6 Conn. App. 292) it is hereby ordered that said petition be, and the same hereby is denied.

BY THE COURT,

/s/ CYNTHIA M. GWOREK
Assistant Clerk-Appellate

Dated: May 15, 1986

Notice to: 5/16/86
Clerk, Superior Court, New Haven-220417
Clerk, Appellate Court
Carol C. Johnson, pro se
Roger Frechett, Esq.
Ullman, Perlmutter & Sklaver

Carol C. Johnson, pro se in support of petition.

IRVING H. PERLMUTTER *v.* CAROL C. JOHNSON
(3366)

BORDEN, SPALLONE and BIELUCH, Js.

The plaintiff attorney sought to recover a fee allegedly owed to him by the defendant. The trial court, although noting that the case had been tried on a theory of express contract, concluded that the plaintiff's complaint sounded in quantum meruit and, invoking the rule of practice (§ 193) which permits a plaintiff to recover a price different from that alleged "if the proof fails to establish the price alleged," awarded the plaintiff damages under that theory in an amount substantially less than he had sought. The court did not, however, award the plaintiff interest. On the defendant's appeal and the plaintiff's cross appeal, *held*:

1. The trial judge correctly denied the defendant's motion that he recuse himself from sitting on the case, which motion was based, inter alia, on the defendant's claim that the judge was ruling on another case involving both parties here and on his further claim that the judge had, in that other trial, inquired as to the health of the plaintiff and his wife.

2. The trial court erred in deciding the case under the theory of quantum meruit since the proof of the hourly rate agreed upon by the parties was uncontradicted; because, however, that court made no finding as to the number of hours which had been expended by the plaintiff, the matter had to be remanded for a hearing on that issue.

3. The defendant's claim that the trial court erred in not "condemning" the plaintiff for retaining money which had been paid to him on the defendant's behalf was without merit, the plaintiff having disclosed that he had received the money and that he was holding it in escrow pending a final determination of his rights; moreover, the trial court correctly permitted the plaintiff to keep that money as a setoff since an attorney has an equitable lien in money received on behalf of a client for his services and expenses.

4. The trial court did not abuse its discretion in not awarding interest to the plaintiff.

Argued October 11, 1985—decision released February 25, 1986

Action to recover attorney's fees for services rendered to the defendant, and for other relief, brought to the Superior Court in the judicial district of New Haven and tried to the court, *Levine, J.*; judgment for the plaintiff, from which the defendant appealed and the plaintiff cross appealed to this court. *No error on the appeal; error, further proceedings on the cross appeal.*

Carol C. Johnson, pro se, the appellant-appellee (defendant).

Roger J. Frechette, with whom, on the brief, was *Irving H. Perlmutter*, pro se, for the appellee-appellant (plaintiff).

BIELUCH, J. This appeal by the pro se defendant, Carol C. Johnson, arises out of an action instituted by the plaintiff, Irving H. Perlmutter,[1] for attorney's fees owed to him by Johnson. The fees were incurred as a result of Perlmutter's initiation of two actions on Johnson's behalf.[2] Johnson paid a portion of Perlmutter's bill, but has refused to pay the remainder. Perlmutter therefore instituted the present action.

The trial court concluded that Perlmutter's claims were based on a theory of quantum meruit and awarded Perlmutter a total of $4574.06, representing a reasonable fee for Perlmutter's services in the two cases plus his disbursements. The figure was significantly less than Perlmutter had sought. The court declined to award Perlmutter interest.

---

1 The plaintiff has also filed a cross appeal which will be discussed herein.

2 See *Johnson* v. *Fuller*, 190 Conn. 552, 461 A.2d 988 (1983); *Johnson* v. *Zoning Board of Appeals of Branford*, 2 Conn. App. 24, 475 A.2d 339, cert. denied, 194 Conn. 806, 482 A.2d 711 (1984), cert. denied, ____ U.S. ____, 105 S. Ct. 2141, 85 L. Ed. 2d 498 (1985). The facts of those cases are adequately set forth therein.

Johnson has raised several claims of error, only five of which we will discuss here.[3] In addition, by his cross appeal, Perlmutter has raised six claims of error.[4] We find no error on the appeal, but do find error on the cross appeal.

We note at the outset that Johnson's brief and reply brief both fail to comply with the requirements of Practice Book § 3060F. The briefs do not contain a statement of the issues presented. Further, they do not contain anything more than a rambling description of the facts of the two cases underlying the present action. No legal arguments are contained in the briefs. On the basis of the briefs, the record, and Johnson's original preliminary statement of issues, however, we will nonetheless review all claims which are "fairly presented, or at least, reasonably discernible, upon the record before us." *Shuster* v. *Buckley*, 5 Conn. App. 473, 476 n.2, 500 A.2d 240 (1985).

Johnson has made claims of error pertaining to the decision of the trial judge, *Levine, J.*, denying two motions to recuse himself from sitting on this case. The first of these motions was based on Johnson's claims (1) that "issues involved herein are under consideration by the Appellate Court,"[5] (2) that Judge Levine was also in the process of ruling on another case at the time of trial which involved both parties to this action, and (3) that, in the other case, Judge Levine had inquired as to why Perlmutter was using a cane for assistance in walking, and as to Perlmutter's wife's health. We conclude that the judge was correct in refusing to recuse himself in this instance.

---

3 The remainder of Johnson's claimed errors constitute an attempt to dispute the factual findings of the trial court. We will not upset those findings. Practice Book § 3060D.

4 Only three of those claims were briefed. We therefore deem the remainder to have been abandoned. Practice Book § 3060F(a).

5 The "issues" of which Johnson spoke were involved in the appeal by Johnson of one of the cases for which Perlmutter's fee was in dispute. It should be obvious that an appeal of which the court was unaware until Johnson mentioned it, and which did not involve a ruling made by Judge Levine, could have little bearing on the court's impartiality.

Proof of actual bias on the part of the court is not required to demonstrate that the trial judge should have disqualified himself. *Cameron* v. *Cameron*, 187 Conn. 163, 170, 444 A.2d 915 (1982). Rather, the appearance of impropriety is as important as the reality where the court is concerned. Id.

In the present case, the trial court admirably demonstrated its impartiality in permitting Johnson, as a pro se litigant, a broad latitude in trying his case. With regard to Johnson's remaining claims, the assertion that Judge Levine was also considering another case involving these parties at the time of trial, is unsubstantiated. There was no argument presented on this claim beyond the bald statement. Neither the parties nor Judge Levine referred to any such trial after it was first raised by Johnson. We do, however, take judicial notice that the judgment was affirmed by this court recently in *Linden Shore District* v. *Johnson*, 4 Conn. App. 225, 493 A.2d 901, cert. denied, 197 Conn. 803, 495 A.2d 282 (1985), an action for foreclosure of municipal tax liens on lands owned by Johnson. Perlmutter moved to be made a party defendant in that case because he claimed an interest in the land there at issue by virtue of an attachment which he had filed in the present case. He subsequently, however, filed a statement of no defense to that action before trial. Thus, the mere fact that Judge Levine tried that prior case did not mandate his disqualification in the present case. Prior appearances of a party before a trial judge do not, in themselves, reflect in any way upon the judge's impartiality to decide the merits of the case before him.

Finally, with respect to Johnson's claim that the judge inquired as to Perlmutter's use of a cane, and as to his wife's health, the mere fact that he inquired into Perlmutter's use of a cane, while indicative of a prior acquaintance with Perlmutter, is not a showing of bias in any way. Perlmutter is a practicing attorney and Johnson, as an attorney himself, could not reasonably have expected that Perlmutter would be unknown to the judges of the Connecticut courts. Such prior professional dealings, however, do not demonstrate a personal bias in favor of Perlmutter.

As to Judge Levine's inqury as to Mrs. Perlmutter's health, Judge Levine stated that he did not remember making any such inquiry. Even such an inquiry about Mrs. Perlmutter's condition, if made, however, would be innocuous. The "taking of the silk" by a judge does not bar him from wearing the fabric of ordinary social civility in the presence of all persons, lay or professional.

It should also be noted that Johnson was notified three weeks prior to trial that the case would be heard by Judge Levine. He failed to move for disqualification until the date of trial and, even then, he failed to apprise Judge Levine of his objections during a conference in chambers just prior to the commencement of trial. Under these circumstances, we conclude that the court was correct in denying Johnson's motion.

Johnson's second claim of error regarding disqualification is that Judge Levine engaged in a hushed conversation with opposing counsel at the bench when he knew that Johnson was hard of hearing. Johnson further claims that he demanded to know what the conversation was about, but that Judge Levine refused to say, stating only to the plaintiff that "I may want you to amend your complaint." Unfortunately, we can find no evidence of such a verbal exchange in the transcript of the case. Neither Johnson's brief nor his reply brief refer to any pages in the transcript demonstrating that Johnson made any objection to Judge Levine in this regard, nor does the appendix to his reply brief, which contains copies of seventy-two randomly selected transcript pages, provide us with any evidence of such an objection. We therefore decline to consider this claim.

Both Perlmutter and Johnson have claimed error in the court's decision to award damages based on the theory of quantum meruit.[6] Both parties are in agreement that the

---

6 Ironically, Johnson asserts that the court established a $100 per hour rate pursuant to its use of quantum meruit theory while Perlmutter asserts that the rate thus established was approximately $49 per hour. Given the number of hours which Perlmutter claims to have spent on the matters at issue, this latter figure seems more accurate. Johnson's figure bears no relation to the amount which the court actually awarded.

quantum meruit theory should not be used where there is an express agreement as to the amount to be paid for the services rendered. They further agree that they had contracted for a rate of $65 per hour to be charged to Johnson for Perlmutter's services, although they disagree regarding Perlmutter's claim that this rate was the result of a negotiated "professional courtesy" discount from his usual fee of $100 per hour.

The trial court concluded that the allegations of Perlmutter's complaint[7] sounded in quantum meruit rather than in contract. The court noted, however, that the case was tried on an express contract theory and that the parties agreed upon the actual hourly figure which had been arranged. On the basis of this variance between the pleadings and the proof at the trial, the court invoked Practice Book § 193, concluding that the rule was authority for the court's use of quantum meruit as the theory upon which Perlmutter should recover. Thus, the court found Perlmutter to be entitled to $4574.06 in damages, which figure included Perlmutter's claim for amounts disbursed by him as well as for his fees. We conclude that this was error.

Practice Book § 193 permits the plaintiff to recover a price different from that alleged "if the proof fails to establish the price alleged." In the present case, however, the proof was uncontradicted regarding the price to which the parties agreed. Thus, their agreed price was established and was the only price in evidence before the court. The court, therefore, erred in finding that any other rate of payment was appropriate. Because the trial court made no finding with regard to the number of hours expended by Perlmutter, it is necessary for us to remand this matter for a hearing limited to a determination of the number of hours so expended.

Johnson's final claim relates to the court's error "in not condemning" Perlmutter for retaining $2391.66 paid to him by the Branford board of zoning appeals, which amount repre-

---

7 Paragraph one of the complaint stated that the parties had an agreement regarding "reasonable fees." Paragraph two stated a total amount due in accordance with that agreement. No hourly rate was alleged.

sented reimbursement of taxable costs due Johnson in a prior matter. This claim is also without merit.

Perlmutter never used those funds. Rather, he disclosed their existence to both Johnson and the court when his complaint was filed and stated that those funds were being held in escrow pending a final determination of his rights thereto. He further stated that he had notified Johnson when he received the funds. Under these circumstances, we conclude that Perlmutter correctly placed these funds in escrow and that he was not to be condemned for such action. See Code of Professional Responsibility, Disciplinary Rule 9-102(a). We further note that the court was correct in permitting Perlmutter to keep these funds as an offset. It has long been held that an attorney has "an equitable lien upon the avails [of his actions for a client] for the services and expenses in the suit." *Cooke* v. *Thresher*, 51 Conn. 105, 107 (1883). In the present case, Perlmutter's undisputed testimony was that he obtained the funds on Johnson's behalf as a result of an action which he undertook as Johnson's attorney. He, therefore, had a lien upon those funds.

Perlmutter's cross appeal raises one final claim, namely, that the court erred in failing to award him interest, as damages on his award. See General Statutes § 37-3a. Such an award is a matter which is within the discretion of the trial court. *Sperry* v. *Moler*, 3 Conn. App. 692, 694, 491, A.2d 1115 (1985). We conclude, upon the record, that the court did not abuse its discretion in this case.

There is no error on the appeal. There is error on the cross appeal, the judgment is set aside and the case is remanded for a hearing limited to the issue of the number of hours which Perlmutter expended in connection with his efforts on behalf of Johnson; upon a determination of that number of hours, judgment is to be rendered for Perlmutter in the agreed amount of sixty-five dollars multiplied by the number of hours so found, plus disbursements, less a setoff for Johnson's funds held by Perlmutter in his clients' funds account.

In this opinion the other judges concurred.

STATE OF CONNECTICUT
SUPERIOR COURT
JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN

June 14, 1984

22 04 17

IRVING H. PERLMUTTER, of New Haven, Connecticut

vs.

CAROL C. JOHNSON, of New York, New York

Present:

HONORABLE NORTON N. LEVINE, *Judge*

JUDGMENT

This action, by writ and complaint, claiming damages, came to this Court on the first Tuesday of September, 1983; thence to later dates when the parties appeared and were at issue to the Court, as on file, and thence to the present time.

The Court, having heard the parties, finds the issues for the plaintiff.

Whereupon it is adjudged that the plaintiff recover of the defendant $4,574.06 damages and costs, taxed at $____.

And it is further adjudged and decreed that the plaintiff is authorized and empowered forthwith to withdraw the

$2,391.66, representing a payment from the Town of Branford for benefit of the defendant, presently held by him in escrow and apply said sum in partial payment of the total judgment entered in his favor herein.

By the Court

/s/ (Illegible)
Deputy Chief Clerk

SUPERIOR COURT
JUDICIAL DISTRICT OF NEW HAVEN

June 13, 1984

No. 220417

IRVING H. PERLMUTTER

v.

CAROL C. JOHNSON

MEMORANDUM OF DECISION

I

PRELIMINARY STATEMENT

This is an action to recover a balance claimed due for legal fees, and disbursements. Plaintiff is an attorney, admitted to practice in the State of Connecticut. Defendant alleged that he is an attorney, duly admitted to practice in the State of New York, but not in Connecticut. In this case, Defendant appeared *pro se*, and represented himself throughout the entire instant trial, in May, 1984.

Defendant Johnson testified as a witness on his own behalf, and acted as his own counsel. He did not produce any other witnesses, to support his defense in the present case, although he offered certain documents in evidence, as exhibits.

Perlmutter commenced this action to recover for the said balance, for his services and disbursements on behalf of Johnson, between November 21, 1980–March 30, 1983. The Complaint alleged the existence of an agreement between the parties that Johnson would pay "reasonable fees" for Perlmutter's services, plus disbursements.

However, at the time of trial, Perlmutter testified that, in his initial 1980 conferences with Johnson, and at the time of his retention, he actually quoted a fixed fee of $100.00 per hour to Johnson; that there was some discussion as to granting a professional discount to Johnson, because of his status as an attorney; and that Perlmutter finally consented to accept $65.00 per hour, as an agreed hourly charge.

The Perlmutter Complaint is dated July 18, 1983, and in Par. 2 thereof asserted a balance due, for legal services and disbursements, in two cases, in the total sum of $9,784.06, as summarized hereinbelow.

II

JOHNSON v. FULLER, et al.

The claim arises out of two litigated cases. The first is captioned *Carol C. Johnson* v. *Harold J. Fuller, et al.*

Johnson v. *Fuller* contained Johnson's demand for unpaid rent, and damages to residential premises, owned by Johnson, at 201 Linden Avenue, Branford. Johnson had leased the home, in 1978, to two Defendants, to wit, Harold Fuller and Cynthia Kreske, as tenants. Defendants in the Fuller case had filed a Counter-Claim against Johnson, seeking $12,500.00 damages.

The Superior Court for the Judicial District of New Haven (Grillo, J.) rendered a judgment in favor of Johnson, on or about February 11, 1981, in the sum of $6,850.00; and further entered a judgment for Johnson on the Counter-Claim. Fuller and Kreske appealed this judgment. On July 5, 1983, the Supreme Court of Connecticut affirmed the judgment for Johnson, in the said sum of $6,850.00, and the judgment for Johnson on the Counter-Claim, in a unanimous opinion. Said case is reported in 190 Conn. 552.

Johnson, at trial herein, made two major contentions, as to the Fuller case. First, after Judge Grillo's decision in favor of Johnson, and the ensuing Fuller appeal to the Supreme Court, Johnson asserts that he did not specifically authorize Perlmutter to represent him on said appeal. He maintains that all of

Perlmutter's services, rendered on the appeal, were without Johnson's knowledge or consent. Perlmutter denies this allegation. The decision of the Supreme Court, in 190 Conn. 552, contains solely the name of Perlmutter, as counsel for Johnson. Johnson's argument, relative to lack of authority, is not persuasive.

Johnson also claims that, in any event, the Fuller Defendants lacked visible assets; and that the said 1983 judgment in his favor, entered by the Connecticut Supreme Court, was uncollectible, as of the date of the instant trial.

Relative to the Fuller case, and following the trial before Judge Grillo, Perlmutter initially billed Johnson, on or about February 2, 1981, for $1,290.00. It reflected 12.9 hours expended, at $100.00 per hour; less a professional discount of 1/3, or a net of $860.00. (Plaintiff's Exh. "A"). On or about February 5, 1981, Johnson sent Perlmutter his check for $860.00, covering this initial bill, at the reduced rate. (Plaintiff's Exh. "B").

As to the ensuing appeal to the Supreme Court, in the Fuller case, Perlmutter alleged that he spent 33.4 hours, in defense hereof, through March 30, 1983. He hence submitted a second bill to Johnson, as follows, for said appeal. (Plaintiff's Exh. "E", dated March 31, 1983).

Net bill for services	$3,100.00
Disbursements, for transcript and printing briefs	628.58
Total	$3,728.58

Perlmutter seeks reimbursement, for the second payment due in the Fuller case, at $100.00 per hour, by urging that the $35.00 hourly professional discount was originally offered, on condition that Perlmutter's invoices would be paid forthwith. Perlmutter argues that Johnson's complete failure to make prompt payment of the second bill, justifies Plaintiff's second invoice, using the increased billing rate of $100.00 per hour.

Johnson filed an Answer herein, dated September 7, 1983 (#101). His first statement (I) consists of a "General Denial."

His second allegation (II), under the caption of "Defenses," is that, "Competent services were to be rendered under a charge of $65 an hour. Such services were not rendered."

The said allegation (II) seemingly charges Perlmutter with lack of proper performance of his professional duties, or incompetent services. By so doing, Johnson assumed the burden of proving his Special Defense. *Bent* v. *Green*, 39 Conn. Sup. 416, 419-420. (App. Sess. 1983). *DuBose* v. *Carabetta*, 161 Conn. 254, 262. *Slade* v. *Harris*, 105 Conn. 436, 440.

Johnson's third allegation in his Answer (II-B) is that, "The attachment was illegally made." See Sec. VI, infra.

III

JOHNSON v. ZONING BOARD OF APPEALS

Carol C. Johnson v. *Zoning Board of Appeals of Branford, et al.*, #80783, (hereinafter sometimes referred to as the "ZBA" case), is a case which has been pending in this Court, or its predecessor, to wit, the Court of Common Pleas, since the first Tuesday of January, 1969. It arose from the 1968 grant of a variance, by the Branford Zoning Board of Appeals, to Walter J. Kreske and Annette Kreske, who occupied a residence in Branford, abutting Johnson's premises. These are the same Johnson premises as those involved in the Fuller case.

The variance pertained to a carport, and an addition to the Kreske house. Johnson prosecuted an appeal from the granting of said variance.

The Court has inspected the file of the said ZBA case, under the rule of Judicial Notice, and with the consent of both parties herein.

At the time that Johnson first consulted Perlmutter, in November, 1980, the ZBA case (and thus, Johnson's appeal), was in the process of dismissal, under the Dormant Case Program. The case remained in that status until June, 1981. Following a hearing, the case was restored, in June, 1983, to the active trial list, pursuant to the order of Judge Fracasse. The Motion to Vacate the Dismissal was filed by Perlmutter's office. The ZBA file contains a substantial number of plead-

ings, Motions, and briefs relative thereto, filed by Perlmutter, or his office, between June–November, 1981, on behalf of Johnson.

On November 10, 1981, the Branford Town Counsel filed a Motion for Summary Judgment, claiming that Johnson's appeal from the original granting of the variance had been rendered moot, by a 1973 amendment to the Branford Zoning Regulations. Perlmutter notified Johnson of said Motion for Summary Judgment, and of his belief that Johnson's appeal was, in fact, thus moot.

Johnson disagreed with Perlmutter's opinion. Because of the disagreement, Perlmutter requested that he be relieved of any further duties, arising out of the ZBA case. On November 30, 1981, Perlmutter moved for permission to withdraw his appearance for Johnson, in the ZBA case, because of the said dispute between himself and Johnson.

After Perlmutter had withdrawn from the ZBA case, and on or about May 24, 1982, the Superior Court (Celotto, J.), granted a Motion to Dismiss Johnson's appeal, because of mootness. Johnson, *pro se*, filed an appeal therefrom, to the Appellate Session of Superior Court, on or about July 27, 1982. On or about May 22, 1984, the Appellate Court (to which the case had been transferred) affirmed the dismissal of the ZBA case, as moot. 2 Conn. App. 24. Johnson appeared before the Appellate Court *pro se*.

Perlmutter rendered a bill to Johnson, dated November 12, 1981, relative to the ZBA case, based on a charge of $65.00 per hour, for services up to November 12, 1981. The total thereof, including disbursements, was $2,957.48 (Plaintiff's Exh. "D").

IV

PERLMUTTER'S PRESENT CLAIMS AS TO FEES AND DISBURSEMENTS

As of the date of trial herein, in May, 1984, Perlmutter (Post-Trial Brief, pp. 3, 5) initially claimed that the following fees were due him:

1. *Fuller* case	*Fees*
33.4 hours at $100 per hr.	$3,340.00
Disbursements	628.58
Total	$3,968.58

The above summary gives credit to Johnson for his original payment of $860.00, on or about February 5, 1981. (Sec. II, supra).

2. *ZBA* case	
44.8 hours at $100 per hour	$4,480.00
Total Disbursements	45.48
Total due, 2 cases (exclusive of interest)	$4,525.48 $8,494.06

However, if any final award should be based on a reduced charge of $65.00 per hour, Perlmutter's revised total (p. 7, Post-Trial Brief) is as follows:

1. Fuller case 33.4 hours		
2. ZBA case 44.8 hours		$7,820.00
Less: 1/3 discount		2,606.67
Net balance due, for fees		$5,213.33
3. Plus Disbursements:		
Fuller case	$628.58	
ZBA case	45.48	
Total for disbursements		$ 674.06
Total due, 2 cases, at reduced rate		$5,887.39

In Perlmutter's affidavit dated July 19, 1983, annexed to his Complaint, he states that he is holding, in escrow, the sum of $2,391.66, received from the Town of Branford. It appears that this amount was paid to Perlmutter, to meet the Town's obligation for reimbursement of certain costs, in the ZBA case. Perlmutter requests an Order, that said sum be applied on his claim for legal fees and disbursements, at the conclusion of the instant litigation.

V

THE PLEADING VARIANCE

Par. I of Perlmutter's Complaint alleged an agreement between the parties that Perlmutter would charge "reasonable fees" for his services. The inference, in the Complaint, was that Perlmutter was seeking recovery, on the basis of *quantum meruit*. However, Perlmutter's testimony, at trial, was that there was an express oral agreement between the parties, in November, 1980, whereby Johnson would pay Perlmutter a specific hourly rate for his services.

Perlmutter testified (as noted previously in Sec. I) that his normal hourly rate was $100.00, but that he decided to give Johnson a professional discount of $35.00 per hour, in view of Johnson's claimed status as an attorney, admitted in New York. Johnson's basic contention, in his Answer, seems to be that the hourly rate, as agreed, was $65.00 per hour, in any and all events. There is hence a variance between the pleadings and proof, as to the underlying theory of Perlmutter's claim. In other words, is his basic allegation one for recovery in *quantum meruit*, or does it rely on an express oral agreement, for a fixed hourly rate?

The said variance is not finally conclusive, or fatal. The Court may reach a decision, as to a balance due, even though there may be a variance between the pleadings and proof, as to the precise theory of Plaintiff's recovery. Sec. 193, *Practice Book*.

VI

DEFENDANT'S ANSWER AND TRIAL CONTENTIONS

As previously stated, in Sec. II, Johnson filed an Answer dated September 7, 1983 (#101), which consisted of a General Denial, and two Special Defenses. The First Defense asserts that, "competent services" were to be rendered to Johnson, at an hourly charge of $65.00, and that, "Such service were not rendered".

The second Special Defense asserts that Perlmutter's attachment on Johnson's home in Branford, at the outset of the instant action, was "illegally made". Johnson did not offer any evidence at trial, in support of his Second Defense. It is, therefore, deemed to be abandoned.

As to the First Special Defense, Johnson testified at length, as a witness on his own behalf. His basic claim seemed to be that Perlmutter expended a substantial amount of time and effort on the two cases, relative to problems therein, which was not necessary; and which, therefore, unjustifiably increased Perlmutter's bill. Johnson intimated that some of Perlmutter's services were, in addition, not competently performed, or unauthorized, and did not justify any further payment to Perlmutter. In other words, Johnson, at trial, denied any further liability whatsoever to Perlmutter for additional legal fees and disbursements, over and above his one payment of $860.00 to Perlmutter, in the Fuller case. As to Johnson's burden of proof, on the issue of competence, see Sec. II, supra.

It should be observed that, at least as of February 2, 1981, Johnson acknowledged that $100.00 an hour was a fair basic charge; that he was satisfied with Perlmutter's professional services rendered to him, as of that date; and that he was willing to make his $860.00 payment to Perlmutter, arising out of the *Fuller* case, reflecting the courtesy discount.

VII

General Comments

To recapitulate, in part, Perlmutter rendered services in the Fuller case, in obtaining a money judgment for Johnson, which was sustained, in 1983, by the Connecticut Supreme Court. However, so far as the record discloses, Johnson has not been able to collect any monies to date, on account of said judgment. Hence, Perlmutter's efforts have not produced any financial rewards from that case, for Johnson's benefit.

In the ZBA case, Perlmutter rendered miscellaneous services to Johnson for about twelve months. It involved a zoning

variance appeal, which had been commenced by Johnson. Johnson ultimately served on appeal therein as his own counsel, following a dispute between Perlmutter and himself. As seen in Sec. III hereinabove, the Appellate Court, in May, 1984, sustained the dismissal of Johnson's appeal, as moot.

Therefore, wholly apart from the total hours claimed to have been expended by Perlmutter in both cases, there is no fully accurate method of measuring the fair and reasonable amount of his fees, by one of the important factors commonly invoked, to wit, the final and productive results achieved, as a consequence of counsel's efforts.

It appears that the parties did not originally execute a written contract as to counsel fees, in 1980. It is regrettable that a written agreement, containing explicit terms and conditions, was not concluded. The absence thereof was a substantial factor in the resulting friction between Perlmutter and Johnson.

Perlmutter and Johnson became involved in a dispute, as to the events in the ZBA case, which led to Perlmutter's withdrawal from the ZBA case in 1981. Nevertheless, this was not a final breach between the parties. It is very clear that Perlmutter continued to render substantial services to Johnson, in the Fuller case, for many months following November 30, 1981; and culminating in the 1983 decision of the Supreme Court, in favor of Johnson, and against Fuller. (Sec. II, supra).

Hence, the final outcome of both cases did not produce direct financial, or other advantages, in the zoning sense, for Johnson. However, that is a far cry from concluding that, by virtue thereof, Perlmutter is not entitled to any additional compensation whatsoever, or that his services in the two cases were inadequate, or incompetent. The record does not support such a finding, as urged by Johnson.

VIII

INTEREST

Perlmutter also makes a claim for interest, (Sec. VIII, Perlmutter brief) in addition to any principal balance due. His calculation is as follows:

A. Fuller Case	$ 393.55
B. ZBA Case	947.59
Total	$ 1,341.14

Perlmutter argues that interest may be awarded to the date of judgment, in addition to the principal sum found due, where, in the interest of equity and fair play, the award of such interest is proper. *Kovacs & Co.* v. *Alpert*, 180 Conn. 120, 127. Sec. 37-3a, *Gen. Stats.*

The allowance of interest, as an element of damages, is primarily an equitable determination, and one lying within the discretion of the Court. *Bertozzi* v. *McCarthy*, 164 Conn. 463, 467.

IX

CONCLUSION

The Court feels that its conclusion should be based on *quantum meruit*.

It is axiomatic that many factors enter into a final judgment relative to legal fees, based on *quantum meruit*; including, but not limited to, the amount of preparation required, the novelty of the questions presented, the intricacy of the case, customary charges for similar services, and the results actually obtained. *Balkus* v. *Terry Steam Turbine Co.*, 167 Conn. 170, 179 (note). See the recent case of *O'Brien* v. *Seyer*, 183 Conn. 199, 206, citing numerous factors to be considered, relative to counsel fees, as contained in DR 2-106, *Code of Professional Responsibility, Practice Book*.

Even where an attorney is discharged, without just cause, the attorney is entitled to reasonable compensation for the work he has done to that point; and not the agreed fee he probably would have earned, had he been allowed to continue in his employment. *Cole* v. *Meyers*, 128 Conn. 223, 230.

The Court has devoted substantial time to its final determination, having in mind the pertinent general considerations just cited, and the fundamental dictates of equity and fairness, in this particular dispute between lawyer and client.

The more credible evidence demonstrates that there is substantial merit to Perlmutter's claim, and that he is entitled to additional compensation. Johnson failed to sustain his burden of proof, on his Special Defense.

Judgment may enter in favor of Plaintiff Perlmutter, and against Defendant Johnson, in the sum of $2,250.00, plus disbursements of $45.48, for services in the ZBA case.

Judgment may also enter in favor of Perlmutter, and against Defendant Johnson, in the sum of $1,650.00, plus disbursements of $628.58, for services in the Fuller case.

The total of Perlmutter's judgment is thus the principal sum of $3,900.00, plus the total of the above disbursements, to wit, $674.06, as stated above; in addition to taxable costs herein.

The Court also concludes that no interest should be allowed Perlmutter herein, under Sec. 37-3a, *Gen. Stats.* (Sec. VIII, supra).

As to the sum of $2,391.66, presently held by Perlmutter in escrow, arising out of the ZBA case (Sec. IV, supra), Perlmutter is authorized and empowered forthwith to withdraw and apply said sum, in partial payment of the total judgment entered in his favor herein.

/s/ LEVINE, J.
Levine, J.

SUPERIOR COURT
JUDICIAL DISTRICT OF NEW HAVEN

November 30, 1981

No. 080783

CAROL C. JOHNSON

vs.

BRANFORD ZONING BOARD OF APPEALS ET ALS

MOTION FOR PERMISSION TO WITHDRAW APPEARANCE

The undersigned, attorney for the plaintiff CAROL C. JOHNSON, respectfully moves this court for permission to withdraw his appearance for the plaintiff. The basis for said motion is as follows:

1. Irreconcilable differences concerning the conduct of this action have arisen between attorney and client and counsel cannot continue to represent the plaintiff under the circumstances.

2. The plaintiff has appeared in this matter *pro se* and he is an attorney at law, regularly admitted to practice before the State of New York. His *pro se* appearance will give him notice of all pending matters. Notice of intention to withdraw appearance was given to the plaintiff personally by the undersigned.

/s/ IRVING H. PERLMUTTER
Attorney

ORDER

The foregoing motion having been heard by the Court and it appearing that the same should be granted, it is ORDERED that Irving H. Perlmutter be and he hereby is granted permission to withdraw his appearance for the plaintiff.